

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.Rev.Pet.No.351 of 1998(C)

CRL.A.341/1996 OF THE COURT OF THE I ADDITIONAL SESSIONS
JUDGE, THRISSUR.

S.C.130/1995 OF THE COURT OF THE PRINCIPAL ASSISTANT
SESSIONS JUDGE, IRINJALAKUDA.
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PETITIONER/APPELLANT/ACCUSED NO.4:-

SHAJI, S/O.GEORGE, PUTHUKKUDYSSERY,
CHATHAMANGALAM DESOM, NENMARA VILLAGE.

BY ADV. SRI.N.A.MURALEEDHARAN

RESPONDENT/RESPONDENT/COMPLAINANT:-

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:-

V.K.Bali,C.J.

Crl.R.P.No.351 of 1998-C

Dated, this the 6th day of December, 2006

ORDER

V.K. Bali, CJ. (Oral)

Petitioner has been held guilty for offences under Sections 341, 324 and 307 of Indian Penal Code and sentenced to pay a fine of Rs.500/- under Section 324, rigorous imprisonment for one year under Section 324 and rigorous imprisonment for three years and fine of Rs.2,000/- under Section 307 of Indian Penal Code, vide order dated 8th November, 1995 passed by the Principal Assistant Sessions Judge, Irinjalakuda. In the appeal preferred, whereas the conviction and sentence were maintained for the offences under Sections 341 and 307, the petitioner was acquitted of the offence under Section 324 of Indian Penal Code, as would be clear from the order dated 18.4.1998 passed by the learned I Additional Sessions Judge, Thrissur. It is against these two orders that the present revision has been filed.

2. Briefly put, the prosecution case has been that there was a meeting of the Left Democratic Front, a political alliance in the State, in the O.K.Hall at Kodungallur on 6.4.1994. At about 4.00 P.M., Suresh Babu (P.W.1), Hiran (P.W.2) and Pradeep (P.W.3) were standing in the premises of the said Hall with

Nowshad, one of the injured in this case who later committed suicide, and other persons. The accused persons were also present there and they had an exchange of words with respect of a clash between two factions that occurred earlier on the same day. In the said wordy duel, C.W.2, Nowshad, had threatened Sasi (A1) that Sasi's limbs would be broken in case Sasi ventured to assault anyone belonging to his faction. The bystanders interfered and the episode ended there. When the convention terminated in the evening, the participants took out a procession and it was proceeding to the southern Nada enroute Eastern Nada and witnesses mentioned above were proceeding along the rear end of the procession. When it reached the Eastern Nada, P.Ws.1 to 3 and Nowshad (C.W.2) took a short cut along the pocket road when the four accused persons appeared in front of them and blocked their way. It was about 6.30 P.M. The witnesses were stopped by the accused persons in front of the O.K.Yogam office, which situates a little away from O.K.Hall. After having way laid the witnesses, the 2nd accused hit C.Ws.1, 3 and 4 with a soda bottle and this caused hurt. Further, the 2nd accused broke the soda bottle and displayed the broken part remained in his hand as a threat against the witnesses. P.Ws.1 to

3 and C.W.2 Nowshad ran towards different directions, but accused 3 and 4 followed C.W.2 Nowshad who was running towards south and caught hold of him. Nowshad was wrongfully restrained by accused 3 and 4 when the 1st accused stabbed Nowshad with a knife causing an injury on his chest right below the shoulder.

3. The admitted position is that there were four accused involved in the crime. Accused 1 and 3 absconded. So, they were not tried along with the petitioner. In so far as 2nd accused is concerned, he was ultimately held guilty of the offence under Section 323 of Indian Penal Code and sentenced to pay a fine of Rs.1,000/- only. It is the petitioner who has been held guilty for the offence under Section 307 read with Section 34 of Indian Penal Code. The allegation of stabbing is against 1st accused. Accused 3 and 4 had caught Nowshad. A finding has been recorded on the basis of statement made by P.Ws.1 to 3 and 7 that they had not seen knife (M.O.1) in the hand of 1st accused before the stab injury was actually inflicted and also they would not know whether the weapon had been kept by 1st accused. In so far as 2nd accused is concerned, even though the facts were identical, he has not been held vicariously liable for

one of the accused causing stab injury to the injured, but in so far as the petitioner (A4) is concerned, he has been held guilty under Section 307 read with Section 34 of Indian Penal Code.

4. Learned counsel representing the petitioner vehemently contends that the mere fact that 2nd accused had caused injuries with a broken soda bottle and the petitioner along with other accused caught hold of the injured, in the totality of the facts it would have made no difference in the applicability of Section 34 of Indian Penal Code. There appears to be merit in the contention of the learned counsel as noted above. Even though it may be true that 2nd accused, who has ultimately been held guilty under Section 323 of Indian Penal Code, might have caused injuries by a broken soda bottle, whereas the petitioner and the other accused had caught hold of the injured, but the significant fact is that even the witnesses would not know or might have seen knife M.O.1 in the hands of A1. From the deposition made by them, it is absolutely clear that A1 was not holding a knife in his hand and it is at the time of occurrence only he had taken out a knife from his person and caused injuries. In the circumstances, it could not be said with certainty that the petitioner would know that A1 was armed with a knife. Whereas, it could well be a case

of a common intention to cause injuries, but once the petitioner would not know that A1 was armed with a knife, it could not be a case of sharing the intention of causing injury by A1. In so far as other circumstances are concerned, they are identical and in the circumstances as mentioned above 2nd accused has not been held vicariously liable.

In totality of the facts and circumstances of this case, this revision needs to be partly allowed. The order of conviction under Section 307 of Indian Penal Code is set aside. The petitioner is, however, held guilty under Section 323 I.P.C. and in the interest of justice, he is sentenced to pay a fine of Rs.1,000/- (Rupees one thousand only). The conviction and sentence recorded by the Courts below under Section 341 I.P.C. shall stand confirmed. Ordered accordingly.

V.K.Bali
Chief Justice

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